

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3505 of 1996

Dated 14-09-2005

Between:

M/s. Gupta Steel Wire Industries.

... PETITIONER

AND

The Industrial Tribunal-II and another.

... RESPONDENTS

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ORDER:

This writ petition is filed against the Award of the Industrial Tribunal-II, Hyderabad, in I.D.No.53 of 1994, dated 16-03-1995, whereby the first respondent-Tribunal directed that the petitioner shall re-employ Sri K.Venkata Rao, Mechanical Operator, Sri K.Sailash, Mechanical Operator and Sri Brahmachary, Foreman, in service restoring their original seniority etc., and that the period of their absence shall be treated as leave without pay.

The facts, to the extent necessary for this writ petition, are that on a reference made

under Section 10(1) (C) of the Industrial Disputes Act, 1947, by the Government of Andhra Pradesh, in G.O.Rt.No.890, W.D.C.W.&L(Lab-I) Department, dated 24-03-1990, the dispute was referred for adjudication before the Industrial Tribunal-II, Hyderabad. The order of reference reads thus:

“Whether the action of the management of M/s.Gupta Steel & Wire Industries, Azamabad, Hyderabad in terminating the services of

1) K.Venkata Rao, Mechanical Operator.

2) K.Sailaiah, Mechanical Operator.

3) P.Brahma Chari, Foreman, is justified?”

If not, to what relief the petitioners are entitled to?”

The reference was originally numbered as I.D.No.111 of 1990 before the Labour Court-I, Hyderabad, and on the case being transferred to the Industrial Tribunal-II, it was re-numbered as I.D.No.53 of 1994. The workmen contended that they were stopped from attending duty and their services terminated without reasonable cause. The employer contended that these workmen had abandoned their services, they had left on their own accord and since the services of these workmen had not been terminated, the question of putting them on notice or payment of terminal benefits or retrenchment compensation did not arise. It was contended by the employer that voluntary abandonment of service did not attract the provisions of Section 25-F of the Industrial Disputes Act.

Other facts, pleaded by both sides, need not be gone into, inasmuch as the Tribunal, while expressing its unhappiness that not a single document was marked by both sides, recorded a finding that given the surrounding circumstances it was clear that the workmen had abandoned their services. The Tribunal took note of the

fact that the workmen had not deposed as to when they had attended work and when they were not allowed to work, that they had not examined any of their colleagues including the President of the Union to show that they were not allowed to work and that nothing had been stated as to what happened to the representation that the workmen had submitted to Assistant Commissioner of Labour, Himayathnagar, on 30-09-1988, complaining that their services had been terminated. The Tribunal also took note of the fact that one of the workman Sri Venkata Rao had not ever been examined as a witness and held that the evidence of the other two workmen Sri Sailaiah and Sri Brahmachary was not convincing. The Tribunal held that it was established that the workmen had abandoned their services. However, taking note of the submission made on behalf of the Management that they were willing to take back the workmen into service since their services had not been terminated, the Tribunal, while holding that the Management of M/s.Gupta Steel & Wire Industries, Azamabad, Hyderabad, had not terminated the services of Sri K.Venkata Rao, Mechanical Operator, Sri K.Sailaiah, Mechanical Operator and Sri Brahmachary, Foreman, directed that the employer shall employ these workmen back forthwith restoring them to their original seniority etc., and that the period of absence shall be treated as leave without pay.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner would submit, referring to paragraph 5 of the affidavit in support of the writ petition, that though the petitioner had informed the Tribunal that it was willing to take back the workmen into service, the said workmen did not report for duty even till the date of filing of the writ petition on 18-02-1996. A reply was sent to the Commissioner of Labour to the notice issued by the petitioner on 22-07-1995 informing that, if really the workmen were interested, they were at liberty to come and join duty. The petitioner, in paragraph 6 of its affidavit, states that the workmen had not reported for duty till the date of filing of the writ petition on 18-02-1996. Whether the workmen reported for duty, subsequent to the award or not, is not in issue in this writ petition. The award of

the Tribunal, in I.D.No.53 of 1994, dated 16-03-1995, alone is the subject matter of challenge in this writ petition and since the Tribunal had merely recorded the concession of the petitioner that it was willing to take back the workmen into service, no interference is called for, insofar as the direction of the Tribunal to employ the workmen back into service forthwith is concerned. The other direction with regards restoration of their original seniority and that the period of absence shall be treated as leave without pay, would, however, require to be set aside, inasmuch as the Tribunal has not assigned reasons as to why this benefit should be given to the workmen concerned in the light of its categorical finding that the workmen had abandoned their services. Misplaced sympathy has no place in industrial adjudication. The only question before the Industrial Tribunal was as to whether the services of the workmen had been terminated or whether they had abandoned their services. Having held that the workmen had abandoned their services and that it was not a case of their services being terminated, the Tribunal ought not to have conferred on the workmen, the benefit of restoration of their original seniority and treating the period of their absence as leave without pay.

The award, insofar as the petitioner was directed to restore the original seniority and to treat the period of absence of the workmen as leave without pay is concerned, is set aside. However, the other portion of the award, which is based on the concession of the petitioner that it was willing to take back the workmen into services, as a result of which, the Tribunal had directed the petitioner to employ the workmen forthwith, is upheld.

The writ petition is allowed to the extent indicated above. No order as to costs.

RAMESH RANGANATHAN, J

Dated: 14-09-2005

Prv